



1 proceedings; and Defendant seeks an order affirming the Commissioner's  
2 decision. The Court has taken the parties' Joint Stipulation under  
3 submission without oral argument.

4  
5 **SUMMARY OF ADMINISTRATIVE PROCEEDINGS**  
6

7 Plaintiff filed her application for SSI on June 3, 1992.  
8 (Administrative Record ("A.R.") 104-07.) In her application, Plaintiff  
9 claimed to have been disabled since that date, due to a mental  
10 impairment and back and neck pain. (A.R. 104, 409.) She has past  
11 relevant work experience as a loan audit clerk and motel clerk. (A.R.  
12 410.)

13  
14 The Commissioner denied Plaintiff's claim for benefits initially  
15 and upon reconsideration. On April 11, 1995, Plaintiff, who was  
16 represented by counsel, testified at a hearing before Administrative Law  
17 Judge David Ganly ("ALJ"). (A.R. 23-69.) In an October 27, 1995  
18 decision, the ALJ found that Plaintiff was not disabled. (A.R. 10-15.)  
19 Plaintiff sought review of that decision in this Court (Case No. EDCV  
20 97-167-MAN), and on March 1, 1999, the Court remanded the case for  
21 further administrative proceedings (the "1999 Order"). (A.R. 418-27.)  
22

23 On February 4, 2002, Plaintiff, who was represented by counsel,  
24 again testified at a hearing before the ALJ. (A.R. 442-501.) In an  
25 April 3, 2002 decision, the ALJ again denied Plaintiff's request for  
26 benefits. (A.R. 409-15.) Plaintiff sought review of that decision in  
27 this Court (Case No. EDCV 02-807-MAN), and on April 13, 2004, the Court  
28 remanded the case for further administrative proceedings (the "2004

1 Order"). (A.R. 1561-83.)

2  
3 On September 8, 2005, Plaintiff, who was represented by counsel,  
4 testified at another hearing before the ALJ. (A.R. 1830-88.) In a  
5 March 30, 2006 decision, the ALJ found that Plaintiff was not disabled.  
6 (A.R. 1523-58.)

7  
8 **SUMMARY OF ADMINISTRATIVE DECISION**  
9

10 In his March 30, 2006 written decision, the ALJ found that  
11 Plaintiff has not engaged in substantial gainful activity since June 3,  
12 1992, her alleged onset date, and she met the disability insured status  
13 requirements on that date and continued to meet them through March 31,  
14 1993. (A.R. 1556.) The ALJ further found that Plaintiff has "severe"  
15 impairments, consisting of: degenerative disk disease and a herniated  
16 disk of the cervical spine; degenerative disk disease of the lumbar  
17 spine; bilateral carpal tunnel syndrome; right knee arthritis; asthma;  
18 hypertension; obesity; a chronic reactive affective disorder; a  
19 depressive disorder, not otherwise specified; a psychophysiological  
20 reaction to pain; and a personality disorder, not otherwise specified.  
21 (*Id.*) The ALJ further found that Plaintiff does not have an impairment  
22 which meets or medically equals one of the listed impairments in  
23 Appendix 1, Subpart P, Regulation No. 4. (*Id.*) In addition, the ALJ  
24 found that "[Plaintiff's] multiple subjective complaints, including her  
25 alleged functional limitations, are credible only to the extent that  
26 they limit [Plaintiff] to the residual functional capacity [found in  
27 this decision]." (*Id.*)

1 The ALJ found that, as of her alleged onset date, Plaintiff was a  
2 "younger person," and at the time of the decision, was "closely  
3 approaching advanced age" pursuant to 20 C.F.R. §§ 404.1563 and 416.963.  
4 (A.R. 1557.) He further found that she has a general education diploma  
5 pursuant to 20 C.F.R. §§ 404.1564(b) and 416.964(b), and has no  
6 transferable skills. (*Id.*)

7  
8 In setting forth Plaintiff's physical residual functional capacity,  
9 the ALJ found:

10  
11 [Plaintiff] has the physical residual functional capacity  
12 to perform basic work-related activities consisting of lifting  
13 and/or carrying 20 pounds occasionally and 10 pounds  
14 frequently due to spine and knee problems, and obesity. She  
15 can stand or walk 4 hours out of an 8-hour work day due to  
16 lumbar spine [problems], [leg problems], and obesity. She can  
17 sit for 6 hours out of an 8-hour work day because of lumbar  
18 spine [problems]. Pushing and pulling are consistent with  
19 [Plaintiff's] lifting limitations. [Plaintiff] requires one  
20 to three minutes every hour to change positions, based on  
21 lumbar spine, cervical spine, and neck problems. [Plaintiff]  
22 cannot climb ladders, ropes, or scaffolding due to her hand  
23 and neck problems. She cannot maintain a fixed position of  
24 her neck for more than one hour. She can occasionally climb,  
25 balance, bend, stoop, kneel, crouch, and crawl due to lumbar  
26 spine [problems]. She can occasionally move her neck. She  
27 should avoid concentrated exposure to all fumes, odors, dusts,  
28 toxins, gases, and poor ventilation because of asthma. She

1 should avoid all hazardous or fast machinery due to problems  
2 with concentration as demonstrated by her restrictions in  
3 activities of daily living. She should avoid all unprotected  
4 heights due to her back and leg problems. She cannot perform  
5 power gripping, torquing, or twisting with the bilateral hands  
6 due to carpal tunnel syndrome. She can [occasionally] flex  
7 and extend her wrists bilaterally because of carpal tunnel  
8 syndrome. She can occasionally use foot controls with the  
9 right leg due to leg problems.

10  
11 (A.R. 1556-57.)<sup>2</sup>  
12

13 With respect to Plaintiff's mental residual functional capacity,  
14 the ALJ found:  
15

16 Prior to June 2004, [Plaintiff's] mental impairment did  
17 not preclude work involving safety operations and work around  
18 hazardous and fast moving machinery.  
19

20 Beginning with June 2004 and continuing through the date  
21 of this decision, [Plaintiff] has been limited to 4-5 step  
22 simple repetitive tasks in a relatively habituated work  
23 setting, requiring no safety operations or hypervigilance due  
24 to problems with concentration and persistence, and as  
25 demonstrated by difficulties with activities of daily living.  
26

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27 <sup>2</sup> This residual functional capacity is consistent with the  
28 requirements for "light work," which involves "lifting no more than 20  
pounds at a time with frequent lifting or carrying of objects weighing  
up to 10 pounds." 20 C.F.R. §§ 404.1567(b), 416.967(b).

1 She cannot have intense interpersonal contact with the public  
2 due to social functioning problems. She cannot perform high  
3 production, high quota work or rapid assemblyline work due to  
4 problems with concentration, persistence, and pace.

5  
6 (A.R. 1557.)  
7

8 The ALJ found that Plaintiff cannot perform her past relevant work.  
9 (A.R. 1557.) However, using Rules 202.14 and 202.21 as a framework and  
10 relying upon the testimony of a vocational expert, the ALJ found that  
11 Plaintiff could perform a significant number of jobs in the national  
12 economy.<sup>3</sup> (A.R. 1555-57.) Accordingly, the ALJ found that Plaintiff was  
13 not "disabled" within the meaning of the Social Security Act at any time  
14 through the date of the decision. (A.R. 1557.)  
15

#### 16 STANDARD OF REVIEW

17

18 This Court reviews the Commissioner's decision to determine  
19 whether it is free from legal error and supported by substantial  
20 evidence. Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996). The  
21 Commissioner's decision must stand if it is supported by substantial  
22 evidence and applies the appropriate legal standards. Saelee v. Chater,  
23 94 F.3d 520, 521 (9th Cir. 1996). Substantial evidence is "more than a  
24 mere scintilla but less than a preponderance -- it is such relevant  
25

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26 <sup>3</sup> Rule 202.14 directs that a person who is an "individual  
27 closely approaching advanced age," is a "high school graduate or more,"  
28 and is "skilled" with skills not transferable is not disabled. Rule  
202.21 directs that a person who is a "younger individual," is a "high  
school graduate or more," and is "skilled" with skills not transferable  
is not disabled. 20 C.F.R. Pt. 220, App. 2.

1 evidence that a reasonable mind might accept as adequate to support the  
2 conclusion." Moncada v. Chater, 60 F.3d 521, 523 (9th Cir. 1995).

3  
4 Although this Court cannot substitute its discretion for that of  
5 the Commissioner, this Court nonetheless must review the record as a  
6 whole, "weighing both the evidence that supports and the evidence that  
7 detracts from the [Commissioner's] conclusion." Desrosiers v. Sec'y. of  
8 Health and Human Serv., 846 F.2d 573, 576 (9th Cir. 1988); *see also*  
9 Jones v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985). "The ALJ is  
10 responsible for determining credibility, resolving conflicts in medical  
11 testimony, and for resolving ambiguities." Andrews v. Shalala, 53 F.3d  
12 1035, 1039-40 (9th Cir. 1995). This Court must uphold the  
13 Commissioner's decision if it is supported by substantial evidence and  
14 free from legal error, even when the record reasonably supports more  
15 than one rational interpretation of the evidence. *Id.* at 1041; *see also*  
16 Morgan v. Comm'r. of the Soc. Sec. Admin., 169 F.3d 595, 599 (9th Cir.  
17 1999); Flaten v. Secretary, 44 F.3d 1453, 1457 (9th Cir. 1995).

#### 18 19 DISCUSSION

20  
21 Here, Plaintiff alleges two disputed issues. First, she contends  
22 that the ALJ failed to consider properly the medical evidence provided  
23 by both treating and consultative physicians. Second, she contends that  
24 the ALJ failed to consider properly her claimed symptoms and  
25 limitations. (Joint Stip. at 4-5.)

1 A. With Respect To The Period Through May 2004, The ALJ's  
2 Consideration Of The Evidence Was Proper And Consistent With The  
3 Governing Legal Standards; For The Period Beginning In June 2004,  
4 Remand Is Necessary For Further Development Of The Record.  
5

6 When the ALJ rejects the opinion of a treating physician, even if  
7 it is contradicted, the ALJ may reject that opinion only by providing  
8 specific and legitimate reasons for doing so, supported by substantial  
9 evidence in the record. Lester v. Chater, 81 F.3d 821, 830 (9th Cir.  
10 1995); see also Reddick v. Chater, 157 F.3d 715, 725 (9th Cir. 1998)(ALJ  
11 erred by rejecting the treating doctors' opinions and relying upon  
12 Social Security examiners' opinions in finding that claimant's chronic  
13 fatigue syndrome had not rendered her disabled). Broad and vague  
14 reasons will not suffice for rejecting the treating physician's opinion.  
15 McAllister v. Sullivan, 888 F.2d 599, 602 (9th Cir. 1989). When a  
16 treating doctor's opinion is uncontradicted, it may be rejected by an  
17 ALJ only "for 'clear and convincing' reasons supported by substantial  
18 evidence in the record." Holohan v. Massanari, 246 F.3d 1195, 1202-03  
19 (9th Cir. 2001)(citation omitted); Reddick, 157 F.3d at 725. These same  
20 rules govern the ALJ's consideration of the opinions of examining  
21 physicians. Lester, 81 F.3d at 830-31.  
22

23 The opinions of examining physicians and medical experts may  
24 constitute substantial evidence upon which an ALJ may rely in assessing  
25 a claimant's residual functional capacity when they are properly  
26 supported by the medical evidence. See, e.g., Tonapetyan v. Halter, 242  
27 F.3d 1144, 1149 (9th Cir. 2001)(consultative examiner's opinion on its  
28 own constituted substantial evidence, because it rested on independent



1 examination of claimant); Morgan, 169 F.3d at 600 (testifying medical  
2 expert opinions may serve as substantial evidence when "they are  
3 supported by other evidence in the records and are consistent with it").  
4

5 Plaintiff contends that the ALJ failed "to properly consider and  
6 assess the opinion[s] of multiple treating sources, including Dr.  
7 Soleimani, Dr. Kikani, Dr. Shih, and Dr. Taylor, a consultative  
8 examiner." (Joint Stip. at 6.) Plaintiff further contends that the  
9 ALJ's reasons for rejecting these opinions were neither specific nor  
10 legitimate and, therefore, constitute error. (Joint Stip. at 7.)  
11 Finally, Plaintiff contends that the ALJ improperly rejected the opinion  
12 of Dr. Joseph Malancharuvil, a medical expert, that Plaintiff's  
13 condition met the requirements of Listing 12.04(C) since June 2004.  
14 (Joint Stip. at 8, citing A.R. 1862.)  
15

16 As detailed in the 2004 Order, the Court's primary concern with the  
17 ALJ's prior decision was that it failed to address medical records from  
18 Plaintiff's physicians regarding her physical impairments, and it did  
19 not accurately and fairly state the medical evidence of record regarding  
20 Plaintiff's claimed mental impairments. (A.R. 1573.) However, the  
21 ALJ's consideration and summary of the medical evidence in his 36-page  
22 March 30, 2006 decision (A.R. 1523-1558) is remarkably different from  
23 the paltry four-page discussion of this evidence in the April 3, 2002  
24 written decision. (A.R. 410-414.) For the reasons that follow, the  
25 ALJ's decision is affirmed with respect to the conclusion that Plaintiff  
26 was not disabled through May 2004, and reversed and remanded for further  
27 development of the record regarding the nature and extent of Plaintiff's  
28 disability in and following June 2004.

1           **1. The ALJ's Physical Residual Functional Capacity Finding**  
2           **Is Affirmed.**

3  
4           At the September 8, 2005 hearing, the ALJ questioned Dr. Sami  
5 Nafossi, an internist who acted as a medical expert in this case,  
6 regarding Plaintiff's physical limitations. (A.R. 1841-42.) The ALJ  
7 rejected the opinions of Dr. Mehrzad Soleimani, the treating physician,  
8 because they were "contradicted by the medical evidence." (A.R. 1540.)  
9 Instead, the ALJ gave weight to the opinion of Dr. Nafossi, the medical  
10 expert, "whose opinion is consistent with the evidence as a whole."  
11 (A.R. 1541.)

12  
13           Despite Plaintiff's argument that the ALJ again failed to consider  
14 properly Dr. Soleimani's opinion, the ALJ was not required to accept Dr.  
15 Soleimani's opinion that Plaintiff could not work. 20 C.F.R. §§  
16 404.1527(e)(1), 416.927(e)(1) ("We are responsible for making the  
17 determination or decision about whether you meet the statutory  
18 definition of disability. . . . A statement by a medical source that  
19 you are 'disabled' or 'unable to work' does not mean that we will  
20 determine that you are disabled."); see also Batson v. Comm'r. of Soc.  
21 Sec., 359 F.3d 1190, 1194-95 (9th Cir. 2004); Magallanes v. Bowen, 881  
22 F.2d 747, 751 (9th Cir. 1989) (a treating physician's opinion "[is not]  
23 necessarily conclusive as to . . . the ultimate issue of disability.").  
24 Moreover, the ALJ correctly observed that Dr. Soleimani's opinion was  
25 vague and conclusory; in his two-paragraph February 1, 2001 letter,  
26 although Dr. Soleimani noted that Plaintiff had "difficulty" with  
27 sitting still or standing "for a long period of time" and that it was  
28 "difficult" for her to ambulate, Dr. Soleimani never provided precise

1 limitations regarding how Plaintiff's physical impairments impacted her  
2 ability to function in the workplace. (A.R. 785.) See Matney v.  
3 Sullivan, 981 F.2d 1016, 1019 (9th Cir. 1992)(ALJ may reject the opinion  
4 of either a treating or examining physician if that opinion is  
5 conclusory, brief, and unsupported by clinical findings).

6  
7 In determining Plaintiff's physical residual functional capacity,  
8 the ALJ properly relied upon the opinion of the medical expert, Dr.  
9 Nafossi, who reviewed the entire medical record in rendering his opinion  
10 as to Plaintiff's physical limitations. (A.R. 1838.) As such, the ALJ  
11 was entitled to rely upon it.<sup>4</sup> Morgan, 169 F.3d at 600.

12  
13 In stark contrast to the April 3, 2002 written decision, the ALJ  
14 discussed at length Plaintiff's treating records regarding her physical  
15 impairments. Accordingly, the ALJ complied with the directions set  
16 forth in the 2004 Order regarding the consideration of evidence  
17 pertaining to Plaintiff's physical impairments, and his finding  
18 regarding Plaintiff's physical residual capacity is affirmed.

19  
20 **2. The ALJ's Findings Regarding Plaintiff's Mental Residual**  
21 **Functional Capacity Are Affirmed, In Part, And Reversed,**  
22 **In Part.**  
23

24 In a June 5, 2001 report, Dr. Divy Kikani, a psychiatrist who

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25  
26 <sup>4</sup> Indeed, the ALJ's physical residual functional capacity  
27 finding is slightly broader than the one Dr. Nafossi assessed; although  
28 Dr. Nafossi found that Plaintiff's upper extremity limitations existed  
only since January 2000 (A.R. 1842), the ALJ nevertheless included such  
limitations in his residual functional capacity finding for the entire  
period at issue.

1 examined Plaintiff at the request of the Commissioner, found that  
2 Plaintiff: had an unimpaired "[a]bility to remember, understand and  
3 carry out simple instructions"; "may have mild to moderate problems  
4 persisting at the normal work situation, under customary work pressure";  
5 had "mild to moderate impairment in [her] ability to interact normally  
6 with co-workers, supervisors, and public"; and "may be expected to show  
7 mild to moderate episodes of emotional deterioration at the normal work  
8 situation, under customary work pressure." (A.R. 796.) In rendering  
9 his opinion, Dr. Kikani examined and interviewed Plaintiff and also  
10 reviewed her medical records, some of which he summarized in his report.<sup>5</sup>  
11 (A.R. 791-93.)  
12

13 In a September 10, 2001 report, Dr. Clifford Taylor found that  
14 Plaintiff: had "mild" impairment in her ability to understand,  
15 remember, and carry out simple job instructions; had "mild impairment in  
16 her ability to maintain attention, concentration, persistence, and pace;  
17 had a "fair" ability to relate and interact with supervisors, coworkers  
18 and the public; and had "mild" impairment in her ability to adapt to  
19 day-to-day work activities, including attendance and safety. (A.R.  
20 821.) Dr. Taylor based his opinion on his testing and examination he  
21 performed on Plaintiff, which the ALJ correctly described. (A.R. 812-  
22 22.)  
23

24 In the 2004 Order, the Court noted that the curt summary of Dr.  
25

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26 <sup>5</sup> Dr. Kikani noted: "[t]he information for the present  
27 psychiatric evaluation was obtained from the patient and from the  
28 available information supplied in the DPSS records." (A.R. 791.) In a  
two-page summary, Dr. Kikani also summarized the content of the records  
he reviewed. (A.R. 792-93.)

1 Taylor's findings in the ALJ's April 3, 2002 decision simply indicated  
2 that Plaintiff had "no" severe mental impairment or limitations due to  
3 her "over-reporting". The ALJ's March 30, 2006 decision corrected this  
4 error, however. Significantly, in the March 30, 2006 decision, the ALJ  
5 found that Plaintiff had a "severe" mental impairment and attendant  
6 limitations based on a detailed and thorough discussion of the evidence.  
7 This evidence included Dr. Taylor's opinions, which the ALJ addressed,  
8 stating:

9  
10 The most rational assumption one can deduce from Dr.  
11 Taylor's full diagnoses, opinions, description, and comments  
12 is yes, he believed [Plaintiff] to have a significant  
13 adjustment disorder covered by the 12.04 series; the mood  
14 disorder had improved; [Plaintiff] had exaggerated her  
15 complaints; she did not cooperate during the examination; and  
16 she was a malingerer. When taken together with other treating  
17 caregivers' assessment of malingering and secondary gain (see  
18 Credibility, below), to find otherwise would defy common  
19 sense.

20  
21 (A.R. 1540, 1547-49.)  
22

23 At the September 8, 2005 hearing, Dr. Joseph Malancharuvil, a  
24 psychologist who served as a medical expert, testified that, based on  
25 his review of the medical records and following his brief additional  
26 questioning of Plaintiff (A.R. 1853-56), Plaintiff had the following  
27  
28

1 limitations from August 1994,<sup>6</sup> to June 2004: "mild" restrictions in  
2 daily living; "mild" limitations in social functioning; "moderate"  
3 limitations in persistence or pace; an ability to complete up to four  
4 to five step instructions; a restriction from operating hazardous  
5 machinery or fast-moving machinery; no fast-paced, out of the way work.  
6 (A.R. 1859-60.)

7  
8 In discussing the opinion of the medical expert, the ALJ stated:  
9 "Based on [Plaintiff's] testimony and without any clinical evidence of  
10 deterioration, however, Dr. Malancharuvil opined [Plaintiff] 'may' equal  
11 the 12.04C criteria since June 2004. He stated this opinion was based  
12 on his impressions without clinical correlation as well as his  
13 assessment of her testimony she has gotten progressively worse over the  
14 last ten years. . . ." (A.R. 1550.) The ALJ rejected Dr.  
15 Malancharuvil's testimony based on his equivocal language, and the fact  
16 that Plaintiff's worsening condition as described by Dr. Malancharuvil  
17 was not supported by the medical records or clinical evidence. (*Id.*)  
18 See Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir. 2002) ("The ALJ need  
19 not accept the opinion of any physician, including a treating physician,  
20 if that opinion is brief, conclusory, and inadequately supported by  
21 clinical findings."); see also Bayliss v. Barnhart, 427 F.3d 1211, 1217  
22 (9th Cir. 2005) (holding that the ALJ properly rejected a treating  
23 psychologist's opinion that was based on the claimant's subjective  
24 complaints and on information submitted by family, friends, and a former  
25 counselor, rather than on "clinical evidence").

26  
27 <sup>6</sup> Although the ALJ noted that this opinion covered the period  
28 from 1992 to June 2004, the transcript shows that Dr. Malanchavuril  
defined the period as from August 1994, to June 2004. (A.R. 1859.)

1 Neither Dr. Taylor nor Dr. Kikani found that limitations in  
2 Plaintiff's mental abilities prohibit her from functioning in the  
3 workplace. As both the reports of Dr. Taylor and Dr. Kikani are based  
4 on a review of records and/or psychological testing, as well as an  
5 examination and interview of Plaintiff, they constitute substantial  
6 evidence. Tonapetyan, 242 F.3d at 1149. In addition, they are  
7 generally consistent with the testimony of Dr. Malancharuvil, who  
8 reviewed the medical record in opining as to Plaintiff's mental residual  
9 functional capacity, for the period from August 1994, to June 2004.  
10 However, the testimony of Dr. Malancharuvil indicates that he found  
11 slightly more restrictive limitations than the ALJ found for the period  
12 from June 3, 1992, to June 2004. Specifically, Dr. Malancharuvil found  
13 that Plaintiff had "moderate" limitations in concentration, persistence,  
14 or pace for the period from August 1994, to June 2004. (A.R. 1859.)  
15 Even with these more restrictive limitations, however, Dr. Malancharuvil  
16 concluded that Plaintiff could have worked during the August 1994 to  
17 June 2004 period. (*Id.*)

18  
19 To the extent that the ALJ resolved the differences among these  
20 opinions in only finding limitations in Plaintiff's ability to function  
21 in work environments involving fast-moving or hazardous machinery for  
22 the time period from June 3, 1992, through May 2004, he did so  
23 appropriately. Batson, 359 F.3d at 1195 (when there are conflicting  
24 medical opinions, the ALJ must resolve the conflict); Thomas, 278 F.3d  
25 at 956 (same); Matney, 981 F.2d at 1019 (9th Cir. 1992)(same).  
26 Furthermore, the ALJ adequately explained his reasons for including the  
27 safety limitations as a measure that took into consideration the impact,  
28 if any, of Plaintiff's reported symptoms of hearing voices.

1 Dr. Malancharuvil's September 8, 2005, testimony took into account  
2 the entirety of Plaintiff's medical records, as well as Dr.  
3 Malancharuvil's brief questioning of Plaintiff on that date. Although  
4 there is no clinical evidence to support his opinion that Plaintiff  
5 "may" equal the 12.04C criteria since June 2004, there is likewise no  
6 evidence in the record to refute it. Dr. Malancharuvil's suggestion  
7 that Plaintiff's condition may have worsened to a totally disabling  
8 extent raises a question that requires further development of the  
9 record. In cases where the claimant's condition is progressively  
10 deteriorating, the most recent medical records are the most probative.  
11 Stone v. Heckler, 761 F.2d 530, 532 (9th Cir. 1985)(holding that earlier  
12 medical evaluations do not constitute substantial evidence to reject  
13 treating physician's opinion, when condition is degenerative);  
14 Magallanes, 881 F.2d at 745-55 ("where claimant's condition becomes  
15 progressively worse, medical reports from an early phase of the disease  
16 are likely to be less probative than later reports"). Although the  
17 Court is loath to remand this decision a third time, the record should  
18 include a proper evidentiary foundation for either accepting or  
19 rejecting Dr. Malancharuvil's opinion that Plaintiff's mental health has  
20 deteriorated to a disabling extent. It is therefore critical that the  
21 record be developed and the evidentiary gap filled.

22  
23 Accordingly, the ALJ's decision is remanded for the limited purpose  
24 of developing the record to address the question raised by Dr.  
25 Malancharuvil, namely, of whether Plaintiff's condition was deteriorated  
26 sufficiently in and since June 2004, to equal a listing.

27 ///

28 ///



1 **B. The ALJ's Finding Regarding The Credibility Of Plaintiff's Claimed**  
2 **Symptoms And Limitations Is Affirmed.**

3  
4 Plaintiff contends that the ALJ has failed to consider properly  
5 Plaintiff's subjective symptoms and limitations in accordance with the  
6 governing standards. (Joint Stip. at 15.) Plaintiff further relies  
7 upon the 2004 Order, in which the Court noted that the ALJ's prior  
8 decision failed to provide clear and convincing reasons for rejecting  
9 Plaintiff's claimed symptoms and limitations. (*Id.*)

10  
11 The Court will give great weight to the ALJ's credibility  
12 assessment. Anderson v. Sullivan, 914 F.2d 1121, 1124 (9th Cir. 1990);  
13 Browner v. Secretary, 839 F.2d 432, 433 (9th Cir. 1988)(recognizing that  
14 the ALJ's credibility determination is to be given great weight when  
15 supported specifically). However, when an ALJ's decision rests on a  
16 negative credibility evaluation, "the ALJ must make findings on the  
17 record and must support those findings by pointing to substantial  
18 evidence on the record." Ceguerra v. Secretary, 933 F.2d 735, 738 (9th  
19 Cir. 1991); Oreteza v. Shalala, 50 F.3d 748, 750 (9th Cir. 1995)(the  
20 ALJ's findings must be "sufficiently specific to permit the reviewing  
21 court to conclude that the ALJ did not arbitrarily discredit the  
22 claimant's testimony."). When discrediting a claimant's testimony, it  
23 is not enough for the ALJ to make only general findings; he must state  
24 which pain testimony is not credible and what evidence suggests that the  
25 complaints are not credible. See Swenson v. Sullivan, 876 F.2d 683, 688  
26 (9th Cir. 1979); see also Lester, 81 F.3d at 834 (an ALJ may reject a  
27 plaintiff's testimony based on lack of credibility only if the ALJ  
28 states specific and cogent reasons for doing so).

1 In the 2004 Order, the Court noted that the ALJ failed to provide  
2 clear and convincing reasons for rejecting Plaintiff's claimed symptoms  
3 and limitations. (A.R. 1580-81.) In his recent decision, the ALJ  
4 clearly expanded upon the less than one-paragraph credibility finding  
5 in the previous decision (A.R. 413) in rendering his multi-page  
6 credibility finding. (A.R. 1555-55.) Among his many reasons for  
7 rejecting the credibility of Plaintiff's claimed limitations and  
8 symptoms, he cited Plaintiff's inconsistent statements, allegations, and  
9 testimony that undermined her allegations regarding her physical and  
10 mental limitations. Benton v. Barnhart, 331 F.3d 1030, 1040 (9th Cir.  
11 2003)(ALJ may reject a claimant's testimony upon: "(1) finding evidence  
12 of malingering, or (2) expressing clear and convincing reasons for doing  
13 so"); see also Light, 119 F.3d at 792 (internal conflicts in claimant's  
14 statements are a proper basis for discrediting allegations regarding  
15 limitations).

16  
17 Specifically, the ALJ noted that, despite Plaintiff's claims of  
18 increasing debilitating pain and depression since her alleged onset  
19 date, she testified at the September 8, 2005 hearing that she cared for  
20 three young children for seven months in 2003, and cared for her  
21 daughter's infant while her daughter was incarcerated in 1998. (A.R.  
22 1869-71.) See also Rollins v. Masssanari, 261 F.3d 853, 857 (9th Cir.  
23 2001)(ALJ properly rejected the claimant's alleged disabling pain based  
24 on her testimony that she single-handedly cared for two young children  
25 and her household while her husband worked long hours six days a week).  
26 In addition, as the ALJ noted, Plaintiff has made inconsistent  
27 statements regarding how active she is and, in fact, reported in 1996  
28 that she had been walking a mile three to four times a week. (A.R. 1093

1 -- September 3, 1996 treating record noting that "[Plaintiff] has been  
2 walking just over a mile and back approximately three to four days a  
3 week.") See also Matthews v. Shalala, 10 F.3d 678, 679-80 (9th Cir.  
4 1993)(the ALJ properly rejected the claimant's allegation that his back  
5 pain was disabling, when claimant performed housecleaning and gardening,  
6 attended school, and only occasionally took pain medication); Fair v.  
7 Bowen, 885 F.2d 597, 603 (9th Cir. 1989)("if, despite his claims of  
8 pain, a claimant is able to perform household chores and other  
9 activities that involve many of the same physical tasks as a particular  
10 type of job, it would not be farfetched for an ALJ to conclude that the  
11 claimant's pain does not prevent the claimant from working").  
12

13 In addition, the ALJ cited Plaintiff's failure to comply with her  
14 prescribed treatment and medications.<sup>7</sup> 20 C.F.R. § 416.930(b)  
15 (providing that "[i]f you do not follow the prescribed treatment without  
16 a good reason, we will not find you disabled"); Choate v. Barnhart, 457  
17 F.3d 865, 872 (8th Cir. 2006)(ALJ properly rejected the claimant's  
18 allegations of disabling symptoms based on his failure to comply with  
19 his treating physician's directions); see also Smolen, 80 F.3d at 1284  
20 (ALJ may consider a claimant's compliance with her prescribed treatment  
21 in assessing the severity of a claimant's symptoms).  
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23 <sup>7</sup> (See A.R. 1795 -- September 5, 2002 progress record noting  
24 that Plaintiff was advised to stop smoking but continued to do so; 1792  
25 -- January 23, 2003 progress record indicating that Plaintiff was non-  
26 compliant with her pain medication; 1768 -- April 26, 2003 progress  
27 record noting that Plaintiff was advised to lose weight; 1769 -- April  
28 26, 2003 progress record indicating that Plaintiff had increased her  
smoking; 1800 -- March 18, 2002 progress record indicating that  
Plaintiff was encouraged to stop smoking completely and recommended to  
follow up with smoking cessation classes; 1801 -- March 13, 2002  
progress record indicating that she was scheduled for a smoking  
cessation class.)

1 Accordingly, the ALJ's finding regarding the credibility of  
2 Plaintiff's claimed limitations and symptoms is affirmed.

3  
4 **C. Remand Is Required.**

5  
6 Having found the ALJ's decision deficient for the reasons noted  
7 above, the Court must decide whether to award benefits or remand for  
8 further proceedings. Where, as in this case, the record needs to be  
9 clarified, remand is appropriate to allow the ALJ the opportunity to  
10 remedy those inadequacies and errors. See Higbee v. Sullivan, 975 F.2d  
11 558, 561-62 (9th Cir. 1991)(remanding case in order to develop the  
12 record); McAllister v. Sullivan, 888 F.2d 599, 603 (9th Cir.  
13 1989)(remand appropriate to remedy defects in the record).

14  
15 **CONCLUSION**

16  
17 Accordingly, for the reasons stated above, the Commissioner's  
18 decision denying benefits is AFFIRMED with respect to the period through  
19 May 2004, and REVERSED and REMANDED for further development of the  
20 record regarding the nature and extent of Plaintiff's disability in and  
21 following June 2004, and any further proceedings consistent with this  
22 Memorandum Opinion and Order.

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1 IT IS FURTHER ORDERED that the Clerk of the Court shall serve  
2 copies of this Memorandum Opinion and Order and the Judgment on counsel  
3 for Plaintiff and for Defendant.

4  
5 LET JUDGMENT BE ENTERED ACCORDINGLY.

6  
7 DATED: March 28, 2008

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9 \_\_\_\_\_/s/  
10 MARGARET A. NAGLE  
11 UNITED STATES MAGISTRATE JUDGE  
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